

BALL JANIK LLP

A T T O R N E Y S

**1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005**

www.balljanik.com

TELEPHONE 202-638-3307

FACSIMILE 202-783-6947

KARL MORELL

kmorell@dc.bjllp.com

December 30, 2009

E-File

**Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-001**

226224

**Re: Finance Docket No. 27590 (Sub-No. 3), TTX Company, Et Al. –
Application For Approval of Pooling of Car Service with Resect to
Flatcars**

Dear Ms. Brown:

**Attached for E-Filing are the Comments of The Greenbrier Companies in
this proceeding.**

If you have any questions, please call me.

Sincerely,



Karl Morell

**ENTERED
Office of Proceedings**

DEC 30 2009

**Part of
Public Record**

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 27590 (SUB-NO. 3)

TTX COMPANY, *ET AL.* – APPLICATION FOR APPROVAL OF POOLING OF CAR
SERVICE WITH RESPECT TO FLATCARS

COMMENTS OF THE GREENBRIER COMPANIES

KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
THE GREENBRIER COMPANIES

Dated: December 30, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 27590 (SUB-NO. 3)

TTX COMPANY, *ET AL.* – APPLICATION FOR APPROVAL OF POOLING OF CAR
SERVICE WITH RESPECT TO FLATCARS

COMMENTS OF THE GREENBRIER COMPANIES

The Greenbrier Companies (“Greenbrier”) submit these brief comments in response to the decision served by the Surface Transportation Board (“Board”) in this proceeding on September 25, 2009 (“September Decision”). In the September Decision, the Board ordered TTX Company (“TTX”) to provide certain information and requested interested parties to comment on whether any of the Board-approved pooling activities of TTX require any action or particular oversight by the Board at this time.

Greenbrier has no specific concerns to report to the Board at this time. Greenbrier nevertheless appreciates the Board commencing this monitoring process. Greenbrier believes that TTX has generally adhered to the restrictions imposed on TTX by the Board and its predecessor. Greenbrier does not believe that TTX has abused its market power. TTX management has continued to employ objective standards in awarding work to suppliers.

TTX’s pooling activities have, for the most part, worked well since 1989. Consequently, Greenbrier supported TTX’s renewal requests in 1994 and 2004. In fact, Greenbrier has never objected to TTX’s ownership and operation of a free-running pool of rail cars. In 1989,

Greenbrier acknowledged that, in a network industry like railroading, a neutral pool of rail cars is economically efficient. Greenbrier's primary concerns in the past have been with TTX's pricing policy on leasing of equipment and the assignment and allocation of rail cars. It appears that TTX no longer engages in such pricing policy and the Board's predecessor, the Interstate Commerce Commission ("ICC") prohibited TTX from assigning rail cars and banned TTX from purchasing rail cars for allocation. *Trailer Train Co., Et Al. – Pooling – Car Service*, 5 I.C.C.2d 552, 608-09 (1989).

In supporting TTX's 1994 extension request, Greenbrier noted that the TTX pool had worked well for car manufacturers, railroads, and shippers, and had contributed to the growth of intermodal freight business by providing a readily accessible supply of serviceable and well-managed freight cars. Greenbrier also supported TTX's request for limited assignment authority for new, untested, and innovative car types by pointing out that the requested authority would promote innovation without returning TTX to the leasing business. Finance Docket No. 27590 (Sub-No. 2), *TTX Company, Et Al., -- Application For Approval Of Pooling Of Car Service With Respect To Flatcars* (not printed), served August 31, 1994, slip op. at 5.

In 2004, Greenbrier once again supported TTX's requested extension of the pooling agreement. In so doing, Greenbrier noted that TTX had not abused its market power since 1989. Rather, in Greenbrier's view, TTX had set published, objective standards for awarding business to suppliers and had adhered to those standards, providing needed capital to the industry. Greenbrier, however, objected to TTX's 15-year renewal request and suggested that, in light of the dynamic nature of the railroad industry, a 10-year period would be more appropriate. Greenbrier also supported the Board's continued restrictions imposed against assignment and

allocation practices and the Board's monitoring to ensure that TTX does not engage in practices not expressly authorized by the Board.

Greenbrier's support of TTX's pooling agreement has not been unqualified or without concern. In 1994, Greenbrier noted its concern about certain structural aspects of the market but found them outweighed by TTX's conduct. The antitrust immunity granted to TTX is an extraordinary privilege which must be carefully and continually monitored by the Board. Future changes in the structure of the railroad industry may alter the Board's balancing of the benefits flowing from the pooling arrangement with the anticompetitive effects of the pool. In 2004, Greenbrier noted that there had been significant concentration in the railroad industry. In 1964, forty one railroads owned TTX, each having an identical 500-share interest. By 2004, nine railroads owned TTX, with four controlling 97 percent of TTX. If the number of Class I railroads continues to shrink, the comparative efficiencies that TTX has provided may also shrink.

Another development that may require monitoring is the significant shift in rail car ownership. Not too long ago railroads owned a majority of the rail cars. Today, a majority of rail cars is owned by third party suppliers. If that trend continues, TTX's role in supplying rail cars and pricing those cars may also need to be adjusted. TTX, on behalf of its owners, cannot afford to have the third-party suppliers' capital flee the railroad industry in search of adequate returns elsewhere. In the medium and long term, such a development would be deleterious to the railroads, their customers, and rail car supply industry.

TTX's pricing policies have also had unintended negative consequences. TTX's below market rates on certain car types have been used by the Class 1 railroads in car hire arbitrations

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of December, 2009, I had the foregoing Comments served by first class mail, postage pre-paid on Patrick B. Loftus, attorney for TTX Company.


Karl Morell

pursuant to the Code of Car Hire Rules administered by the Association of American Railroads. In adopting the deprescription rules, the ICC specifically ruled that the parties to arbitrations were to submit and the arbitrator was to consider "comparable arms-length transactions between railroads, shippers or other parties." *Railroad Car Hire Compensation – Rulemaking*, 9 I.C.C.2d 80, 88 (1992). Surely, the rates set by TTX are not produced through "arms-length transactions".

In summary, Greenbrier has nothing to report which would require immediate action or particular oversight at this time. Once again, Greenbrier applauds the Board's oversight and monitoring activities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl Morell", written over a horizontal line.

KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005
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